THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.25722 OF 2005

Dated: 12-12-2005

Between

Tulasiram S/o. Lal Singh, Amrabad Village and Mandal, Mahaboobnagar District.

...PETITIONER

AND

District Panchayat Officer, Mahaboobnagar.

...RESPONDENT

ORDER:

Heard the learned counsel for the petitioner as well as the learned Government Pleader for the respondent at the admission stage.

Learned counsel for the petitioner submits that the petitioner questions the order of the District Panchayat Officer, Mahaboobnagar dated 17.09.2005 made in proceedings No.A6/1287/2005 directing him not to operate the funds of the Gram Panchayat and authorizing the Upa-Sarpanch to operate the funds in respect of the Sarpanch of the Gram Panchayat with the counter signature of the In-charge Panchayat Secretary until further orders. The learned counsel further submits that, in fact, the matter is squarely covered by the judgment of this Court in W.P.No.22696 of 2005 dated 07.11.2005 wherein this Court held that under Rule 42 of Certain Taxes & Other Lodging of Moneys Received by the Gram Panchayat and Payment of Money from the Gram Panchayat Fund Rules (for short 'the Rules') issued in G.O.Ms.No.30, Panchayat Raj and Rural Development dated 20.01.1995, the District Panchayat Officer is empowered to prohibit the executive authority

from drawing the moneys by an order in writing. As per definition under Section 2(12) of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act') 'Executive Authority' means the Panchayat Secretary appointed to each Gram Panchayat. Therefore, the sarpanch of the gram panchayat cannot be treated as executive authority as defined under Section 2(12) of the Act. If that be so, the District Panchayat Secretary cannot prohibit the sarpanch of the gram panchayat from drawing the monies of the panchayat.

The powers of the Government to suspend or remove the sarpanch are enunciated under Section 249 of the Act. Under Section 249(6) of the Act, if the District Collector is of the opinion that a Sarpanch of the Gram Panchayat willfully omits or refuses to carry out the order of the Government for the proper working of the concerned local body or abuses his position or the power vested in him, and if that continuance of the Sarpanch would be detrimental to the interests of the concerned local body then the District Collector may, by order, suspend the Sarpanch from the office for a period not exceeding three months, pending investigation into the said charges. But, however, no such order shall be passed without giving any opportunity to the proposed action. No doubt, there is main power to suspend the Sarpanch, but that power can only be exercised by giving reasonable opportunity as per proviso to Section 249 of the Act. However, no rules have been made in pursuance of the said Section, but only Rule 42 of the Rules provides giving the power to the District Panchayat Officer to prohibit the Executive Authority alone from drawing the monies of the Gram Panchayat for sufficient reasons to be recorded in writing.

The impugned order goes to show that during the inspection made on 17.09.2005 certain local residents have reported that the sanitation work is held up; on the alleged inspection the District Panchayat Officer suspended the cheque power of the petitioner.
The impugned order reads as follows:

> "During the Enquiry on 17.09.2005 the local residents have informed the District Panchayat Officer, Mahabubnagar, total sanitation work is held up due to negligence of Sarpanch Sri. Thulsiram. Hence, Sri. Thulsiram Sarpanch Gram Panchayat Amrabad of Amrabad Mandal shall not operate the funds of the Gram Panchayat.
>
> Smt. Chandrakala Uppa-Sarpanch shall operate all the Funds instead of Sarpanch Amrabad Gram Panchayat with the counter signature of Sri.M.Ramesh Incharge Panchayat Secretary Gram Panchayat Amrabad until further orders.

> The Sub-Treasury Officer, Achampet; Manager, S.B.I., Amrabad are requested to Honour the Cheque presented by Smt. Chandrakala Uppa-Sarpanch i.e., Incharge Sarpanch with the Counter Signature Sri.M.Ramesh Incharge Panchayat Secretary Gram Panchayat Amrabad."

This Court is of the opinion that the aforesaid order is contrary to Section 249(6) of the Act and also to Rule 42 of the Rules.

As the issue raised in this writ petition is squarely covered by the aforesaid judgment of this Court and having regard to the facts and circumstances of the case, the impugned order is set aside.

The writ petition is accordingly allowed.

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V. ESWARAIAH, J

December 12, 2005

Note: Furnish C.C. of the order in two days.

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